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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-78

In the Matter of

Amendment of Section 73.202(b), RM-8619
Table of Allotments, RM-8678
FM Broadcast Stations.
(Stonewall, Mississippi, and
Lisman, Alabama)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 15, 1996;

Released: March 26, 1996

By the Chief, Allocations Branch:

1. At the request of Stonewall Broadcasters ("petitioner"),² the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 6153 (1995), proposing the allotment of Channel 295A to Stonewall, Mississippi, as the community's first local aural transmission service. Petitioner filed comments reaffirming its intention to apply for Channel 295A at Stonewall. Lisman Community Broadcasting Company, Inc. ("Lisman Community") and Allen Broadcasting Company, Inc. ("Allen Broadcasting") filed counterproposals.³ Petitioner's counsel filed a Notice of Appearance.⁴ Petitioner, Allen Broadcasting and Lisman Community filed reply comments. Petitioner file a statement for the record.⁵

2. In its counterproposal, Lisman Community requests the allotment of Channel 296A to Lisman, Alabama. Lisman Community states that the Commission's goal of providing a more efficient use of the FM spectrum would be accomplished by adopting its proposal since Lisman would be allotted its first local aural transmission service. Lisman Community notes that a new FM facility at Lisman would provide service to 15,883 persons in an area of 2,503 square kilometers. It further states that no community would lose any present or potential service and a substantial area of service would be added if its proposal was granted.

3. In reply to Lisman Community's counterproposal, petitioner states that when comparing requests for a first local service, the respective proposals for Stonewall and Lisman both fall under priority 3, citing, *Revision of FM*

Assignment Policies and Procedures, 90 FCC 2d 88 (1982). Petitioner argues that Stonewall's population of 1,148 is 100% larger than Lisman's population of 481. The population within the 60 dBu contour from the Stonewall proposal is 447% larger than the population within the 60 dBu contour from the Lisman proposal (71,067 to 15,883). Petitioner believes on the basis of the substantially larger population at Stonewall, the Commission can conclude that there is a greater need for a first local service at Stonewall than at Lisman, citing *Bostwick and Good Hope, Georgia*, 6 FCC Rcd 5796 (1991); *Three Oaks and Bridgeman, Michigan*, 5 FCC Rcd 1004 (1990); *Clarksville and Lane, Indiana*, 4 FCC Rcd 4968 (1989).

4. Allen Broadcasting, licensee of Station WBRE, Channel 295A, Lucedale, Mississippi, filed a counterproposal proposing the substitution of Channel 295C3 for Channel 295A at Lucedale and modification of Station WBRE's license to specify operation on Channel 295C3. At the time Allen Broadcasting filed this counterproposal, it was short-spaced to the licensed facility of Station WAVH, Channel 293C2, Bay Minette, Alabama. As such, this counterproposal is unacceptable. See Section 73.208 of the Rules. In this regard, we note that a proposal in MM Docket No. 93-313 would have removed this conflict. See *Notice of Proposed Rule Making* in MM Docket No. 93-313, 9 FCC Rcd 74 (1993). We require a counterproposal to be technically acceptable at the time it is filed. We will not accept and process a counterproposal contingent on the outcome of a pending rule making proceeding. See *Broken Arrow and Bixby, Oklahoma, and Coffeyville, Kansas*, 3 FCC Rcd 6307 (1988), *recon. denied*, 4 FCC Rcd 6981 (1989). Accepting such counterproposals would delay resolution of our rulemaking proceeding and would be unfair to other parties with proposals not contingent on the outcome of a separate pending rulemaking proceeding.

5. In an "Informal Response to Notice of Appearance," Allen Broadcasting suggest the Stonewall Broadcasters' counsel received information from the Commission staff regarding the disposition of its counterproposal in contravention of the Commission's *ex parte* rules. The counsel for Stonewall Broadcasters unequivocally denied that any such *ex parte* contact occurred. The only basis for the Allen Broadcasting allegation is a statement in an August 15, 1995, "Notice of Appearance" in which counsel stated that the Allen Broadcasting "counterproposal was not supported by a channel study demonstrating that Channel 295C3 could be allotted to Lucedale consistent with Section 73.207(b) of the Commission's Rules. This deficiency has apparently caused the Allocations Branch to refuse acceptance of the Lucedale proposal." According to Stonewall Broadcasters, the genesis of this conclusion was the August 15, 1995, Public Notice which listed the acceptance of the Lisman Broadcasting counterproposal in this proceeding but excluded the Allen Broadcasting counterproposal. This Public Notice initiates a 15-day period to file reply comments concerning the counterproposal. In order to facilitate an orderly dispatch of Commission business, a Public

¹ The community of Lisman has been added to the caption.

² Mary C. Glass, on behalf of the petitioner, Stonewall Broadcasters, filed an affidavit verifying the statements contained in the original petition for rule making were accurate to the best of her knowledge.

³ Lisman's counterproposal was placed on Public Notice on August 9, 1995, Report No. 2089 (RM-8678).

⁴ The Notice inadvertently identified Mary C. Glass as the

petitioner. Counsel for petitioner filed a notice of appearance in which he advises the Commission that Ms. Glass is, in fact, a principal of Stonewall Broadcasters and Stonewall Broadcasters is the petitioner.

⁵ Counsel for petitioner filed a statement for the record regarding the *ex parte* allegation made by Allen Broadcasting. In light of our action herein, this pleading is moot.

Notice will list all acceptable counterproposals in a given proceeding. Given the exclusion of the Allen Broadcasting counterproposal, the proper inference is that it was not accepted. While counsel for Stonewall Broadcasters was incorrect in his speculation on why the Allen Broadcasting counterproposal was unacceptable, he was correct on the underlying issue of unacceptability. It is also important to note while the Public Notice indicating that the Allen Broadcasting counterproposal had not been accepted was released August 9, 1995, the actual determination had been reached at an earlier date, both of these dates precede the date the individual became counsel for Stonewall Broadcasters. In view of the above and the unsupported speculation concerning an *ex parte* contact, further inquiry would be unwarranted.

6. We will adopt the proposals set forth by petitioner and Lisman Community. A staff engineering study indicates that the mutual exclusivity between the Stonewall and Lisman proposals can be resolved by the allotment of an alternate channel to Lisman.

7. In view of the above information, we believe the public interest would be served by allotting Channel 295A to Stonewall, Mississippi, and Channel 299A to Lisman, Alabama,⁶ as the communities' first local aural transmission services. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements. Channel 295A can be allotted with a site restriction of 14.1 kilometers (8.7 miles) northeast in order to avoid a short-spacing conflict with the licensed site of Station WSTZ(FM), Channel 294C, Vicksburg, Mississippi.⁷ Channel 299A can be allotted to Lisman without the imposition of a site restriction.⁸

8. Accordingly, pursuant to the authority contained in Section 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 10, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Stonewall, Mississippi	295A
Lisman, Alabama	299A

9. The window period for filing applications will open on **May 10, 1996**, and close on **June 10, 1996**.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁶ According to the 1990 U.S. Census, Lisman is an incorporated community with a population of 481 persons.

⁷ The coordinates for Channel 295A at Stonewall, Mississippi,

are North Latitude 32-11-37 and West Longitude 88-39-48.

⁸ The coordinates for Channel 299A at Lisman, Alabama, are North Latitude 32-10-07 and West Longitude 88-16-57.